

Municipal Water Law Discussion Paper #1 June 23, 2006

Definition of Retail Service Area

Existing draft policy position (July 18, 2005 paper)

The retail service area identifies where a municipal water supplier (MWS) currently provides direct water service and plans to provide new water service. The requirement to delineate a retail service area applies to MWS's with water system plans and applicable water system plan amendments approved after September 9, 2003.

Under the draft policy, a MWS would need to include within its retail service area all areas where it currently provides retail service. A MWS could also include within its retail service area areas where it intended to provide future water service.

Description of Issue

Many questions were raised about how MWS's should define their retail service areas and what criteria they should use in making that determination. Questions were also raised about how the retail service area relates to the service area designations that already exist in water system plans (WSP) and coordinated water system plans (CWSP).

Alternatives

1. Retain existing policy position.

The current language ensures that the retail service area's boundary would have meaning by not allowing service outside the boundary. This also gives the MWS the flexibility to weigh the risks and benefits and determine where it feels it can truly meet the duty to provide service requirement. Based on the comments received, this definition does not provide sufficient direction. It was unclear whether this boundary must match existing boundaries, causing confusion and possibly additional complexities if an existing boundary was not chosen. This position does not allow for exceptions for service outside the retail service area based on immediate public health and safety concerns.

2. Retain existing policy position but allow service outside the retail service area under certain circumstances.

Concerns were raised about restricting water service to only within the retail service area. Under this alternative, service outside a retail service area would be allowed in the following scenarios:

- MWS could provide water service outside the retail service area when there were immediate public health and safety concerns. DOH would require that the retail service area be updated within a specified amount of time.
- MWS may provide temporary service for a neighboring water system if there is a contractual agreement in place, without modifying the retail service area boundary.

These scenarios allow for a MWS to respond quickly to an immediate public health threat. This also compels MWS's to work together and provides flexibility to ensure water service can be provided efficiently to new customers in conformance with applicable land use plans.

3. If a future service area is delineated in a Coordinated Water System Plan – Supplementary Provisions and/or a Water System Plan, the retail service area must be the same.

Based on Coordination Act (70.116 RCW) and Group A Drinking Water (WAC 246-290) requirements, most expanding MWS's have already determined their future service area. Allowing only one service area (retail and future service area) provides clarity and simplifies planning for the MWS, DOH and local governments. This eliminates the need for an additional set of policies and procedures for the different boundaries. Because current planning requirements do not specify where a MWS sets the future service area, the MWS would retain the flexibility to set the boundary where it saw fit. When a MWS delineates its retail service area, it could at the same time modify its future service area boundary if necessary. Based on the new MWL duty-to-serve responsibilities, if a MWS has delineated its future service area boundary further than it intends to provide service, this could cause a decrease in its future service area boundary.

In areas with a CWSP, applicants would be required to request service and the MWS would be required to provide service unless one of the four threshold factors was not met.

4. The retail service area must equal the projected six-year service area.

Comments received suggested the retail service area should be the projected six-year service area boundary. This may be considered a reasonable timeline for planning. This also corresponds to the amount of time for which the water system plan is approved. Because this is considered a short timeframe, this would require the MWS to have an additional boundary identified and possibly separate service area policies for broad planning purposes. This may also increase the number of service area boundary adjustment requests, because a six-year window may be too specific – development does not always occur exactly where and when it is planned. This is a structured timeframe and does not allow the MWS as much flexibility when setting the retail service area.

5. Service within the retail service area must be provided by direct connection.

Under this alternative, service a MWS would need to be provided by direct connection to the applicant requesting service. This would prohibit the development of smaller public water systems by the MWS. It would limit the options for how a MWS could meet its duty to serve requirement. Because of this situation, it may not be timely or reasonable to provide service directly, resulting in the creation of a new public water system not owned or operated by the MWS.

6. Service must be provided by direct ownership and management of system, not necessarily by direct connection.

Direct service should not be limited to direct connection. A MWS may be able to meet the duty to serve requirements by developing a small water system until the system facilities can be extended and join the main system. This would allow for ownership by one system and more options to a MWS who want to broadly look at providing water service in the future.

Preferred Alternative

DOH staff prefers alternatives 2, 3, and 6 collectively, because of the following factors:

- Acknowledges the need to quickly solve immediate public health risks.
- Encourages each MWS to broadly look at planning and limit the proliferation of new permanent small water systems.
- Allows the MWS to retain flexibility in how boundaries are set, while not creating another set of boundaries or service area policies.
- Holds the MWS accountable to provide service within its service area.
- Allows an efficient response to service requests by allowing a large retail service area when appropriate.